

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA, :
 :
vs. : DOCKET NUMBER
 : 1:17-CR-0224-AT-1
ALLEN J. PENDERGRASS, :
 : ATLANTA, GEORGIA
DEFENDANT. : NOVEMBER 20, 2018

**TRANSCRIPT OF HEARING ON MOTION TO DISMISS FOR INEFFECTIVE
ASSISTANCE OF COUNSEL (PART 3 OF 3) PROCEEDINGS
BEFORE THE HONORABLE AMY TOTENBERG
UNITED STATES DISTRICT JUDGE**

APPEARANCES OF COUNSEL:

FOR THE GOVERNMENT:

JEFFREY A. BROWN
TERESA M. STOLZE
UNITED STATES ATTORNEY'S OFFICE

FOR THE DEFENDANT:

ROBERT H. CITRONBERG
LAW OFFICE OF ROBERT CITRONBERG

***MECHANICAL STENOGRAPHY OF PROCEEDINGS AND COMPUTER-AIDED
TRANSCRIPT PRODUCED BY:***

***OFFICIAL COURT REPORTER: SHANNON R. WELCH, RMR, CRR
2394 UNITED STATES COURTHOUSE
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ATLANTA, GEORGIA 30303
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P R O C E E D I N G S

(Atlanta, Fulton County, Georgia; November 20, 2018.)

THE COURT: Mr. Brown, Ms. Stolze, it seems as if counsel and Mr. Pendergrass have some irreconcilable problems in their relationship at this point that I don't know that I can address and mend. I think it is very unfortunate at this late point to be that because I'm sure that you are in full scale trial preparation.

But I don't think it would be wise to proceed with them not being able to communicate in trial and they see things quite differently. So I don't know that I have any alternative under the circumstances other than to appoint new counsel for Mr. Pendergrass.

And I have explained that if I do appoint new counsel that I would not agree to change counsel again. It really would be his business to try to communicate on a rapid basis with the person -- with the attorney on a -- and that sometimes issues that the client has, whether -- can be the client or on either side. They may want something --

(There was a brief pause in the proceedings.)

THE COURT: Clients sometimes want things to happen that can't happen as a matter of law for the lawyer. But, anyway, it is the obligation of the client also to attempt to communicate vigorously with the attorney and vice versa.

And I just want to hear from the Government in the

1 event that the Government maintains that I should not relieve
2 counsel.

3 MR. BROWN: Your Honor, the Government obviously is
4 not privy to your conversations with the defense counsel and
5 the defendant. So in light of the filing, that would probably
6 be the prudent course in this case. So I'm assuming that the
7 trial will be continued.

8 We have a number of witnesses who were traveling from
9 out of state. So we want to be able to notify them, Your
10 Honor, today, if at all possible, and let them know.

11 THE COURT: All right. Well, I'm going to continue
12 the trial. And I'm continuing it at the request of the
13 defendant because of his request for a change of counsel. I
14 mean, he's -- he requested a motion to -- filed his own motion
15 to dismiss based on ineffective counsel. I'm going to deny the
16 motion as to -- the motion to the extent it is requesting
17 dismissal of this matter but grant the motion to the extent
18 that it is complaining about counsel and only that I'm going to
19 allow for substitution of counsel. And we'll appoint new
20 counsel, and this will extend all time lines because I don't
21 know how long new counsel will need to familiarize himself or
22 herself with the case and be ready.

23 So we'll set a new date once we hear from counsel.
24 I'll get him or her -- the issue is that we're in a holiday
25 time, and I'm not sure counsel will be able to assess that

1 immediately. But I'll give counsel at least until the 20th of
2 December -- and if she or he asks for time, I'll give them
3 until the beginning of January -- to tell me how long they need
4 as a whole.

5 All right. So the case is continued. And,
6 Mr. Pendergrass, Mr. Citronberg will communicate with you
7 though as to the selection of the new counsel. I will -- and
8 he will turn over all of his information, documents, and I'm
9 sure will be helpful to new counsel.

10 And if you have any issues with new counsel, then you
11 need to really immediately address them. I don't want to be
12 hearing at the last moment like now.

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Is there anything else we should address?

15 MR. BROWN: Not from the Government, Judge.

16 MR. CITRONBERG: No, Your Honor.

17 THE COURT: All right. Thank you very much.

18 COURTROOM SECURITY OFFICER: All rise. Court stands
19 in recess.

20 **(The proceedings were thereby concluded at 3:45**

21 **P.M.)**

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C E R T I F I C A T E

UNITED STATES OF AMERICA

NORTHERN DISTRICT OF GEORGIA

I, SHANNON R. WELCH, RMR, CRR, Official Court Reporter of the United States District Court, for the Northern District of Georgia, Atlanta Division, do hereby certify that the foregoing 4 pages constitute a true transcript of proceedings had before the said Court, held in the City of Atlanta, Georgia, in the matter therein stated.

In testimony whereof, I hereunto set my hand on this, the 19th day of January, 2019.



SHANNON R. WELCH, RMR, CRR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
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